

ORDER NO. 4394

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Robert G. Taub, Chairman;
Tony Hammond, Vice Chairman;
Mark Acton; and
Nanci E. Langley

Annual Compliance Report, 2017

Docket No. ACR2017

DETERMINATION TO UNSEAL THE MATERIAL FILED IN RESPONSE TO
CHAIRMAN'S INFORMATION REQUEST NO. 1, QUESTION 1

(Issued January 26, 2018)

I. INTRODUCTION

Chairman's Information Request No. 1, question 1 requested that the Postal Service file Inbound Letter Post revenue data by country group and shape as described in Order No. 4215.¹ On January 12, 2018, the Postal Service filed its response to CHIR No. 1, question 1, under seal.² On January 17, 2018, the Commission issued a preliminary determination to unseal materials filed in response to CHIR No. 1, question

¹ Chairman Information Request No.1, January 5, 2018, question 1 (CHIR No. 1) (citing Docket No. R2018-1, Order on Price Adjustments for First-Class Mail, USPS Marketing Mail, Periodicals, Package Services, and Special Services Products and Related Mail Classification Changes, November 9, 2017, at 36 (Order No. 4215)).

² Responses of the United States Postal Service to Questions 1-16 of Chairman's Information Request No. 1, January 12, 2018, question 1 (Response to CHIR No. 1). See Notice of the United States Postal Service of Filing of USPS-FY17-NP31 and Application for Nonpublic Treatment, January 12, 2018 (Notice of Filing USPS-FY17-NP31).

1.³ For the reasons below, the Commission affirms its preliminary determination and directs the Postal Service to re-file its Response to CHIR No. 1, question 1 and related materials in a public library reference.

II. BACKGROUND

In Docket No. R2018-1, the U.S. Chamber of Commerce filed a motion that sought to unseal Library Reference USPS–LR–R2018–1/NP1, First-Class Mail International and Inbound Letter Post Workpapers.⁴ In a subsequent motion, the U.S. Chamber of Commerce limited the scope of its Motion to Unseal and requested the Commission unseal data that is necessary to calculate Inbound Letter Post revenues by country group.⁵ In Order No. 4215, the Commission stated that it believed that such information could improve transparency related to international mail prices. Order No. 4215 at 35-36. The Commission encouraged the “Postal Service to provide *publicly* available Inbound Letter Post revenue data by country group and shape in its FY 2017 Annual Compliance Report[.]” *Id.* at 36 (emphasis added).

CHIR No. 1 requested that the Postal Service provide Inbound Letter Post revenue data by country group and shape. CHIR No. 1, question 1. When the Postal Service filed the requested data, it did so under seal. Response to CHIR No. 1, question 1. The Postal Service states that the data requested by CHIR No. 1 include commercially sensitive information regarding volume, revenue, and markets for the Postal Service’s inbound market dominant products and competitive products. Notice of Filing USPS–FY17–NP31 at 1. Additionally, the Postal Service represents that the material consists of types of information customarily submitted under seal. *Id.* The Postal Service also states that its Response to CHIR No. 1, question 1 “may be

³ Notice of a Preliminary Determination to Unseal the Material Filed in Response to Chairman’s Information Request No. 1, Question 1, January 17, 2018 (Preliminary Determination to Unseal).

⁴ Docket No. R2018-1, U.S. Chamber of Commerce Motion to Unseal Library Reference and Motion to Request Issuance of Information Request, October 16, 2017 (Motion to Unseal).

⁵ See Docket No. R2018-1, US Chamber of Commerce Motion for Leave to Comment on the Postal Service’s Answer to Chairman’s Information Request No. 6, November 2, 2017 (Motion for Leave).

considered proprietary by third parties” because it “could give indications of non-public volume information of [Universal Postal Union] Designated Operators[.]” *Id.* at 2.

In the Preliminary Determination to Unseal, the Commission stated that the statements made by the Postal Service in the Notice of Filing USPS–FY17–NP31 are insufficient to explain why the aggregated data should be maintained under seal. Preliminary Determination to Unseal at 3. Pursuant to 39 C.F.R. § 3007.32(b), the Commission invited any interested person to respond to the Preliminary Determination to Unseal by no later than January 24, 2018. *Id.* at 4. The Commission instructed that any responses maintaining that the material should remain non-public should: (1) identify the nature or extent of commercial harm that may result from public disclosure and the likelihood of such harm; (2) provide a specific hypothetical illustrative example of each alleged commercial harm; and (3) identify any third party who is known to have a proprietary interest in the aggregated Inbound Letter Post data. *Id.*

III. RESPONSES

The Postal Service, United Parcel Service, Inc. (UPS), the Association for Postal Commerce (PostCom), the National Association of Manufacturers (NAM), the U.S. Chamber of Commerce, the International Housewares Association (IHA), Congressman Kenny Marchant, and James Smaldone, Founder and CEO of Mighty Mug, Inc. (Mighty Mug), filed responses to the Preliminary Determination to Unseal.⁶

⁶ Response of United States Postal Service to Order No. 4377, with Portions Filed Under Seal, January 24, 2018 (Postal Service Response) (The Postal Service filed an unredacted version of its response under seal.); Comments of United Parcel Service, Inc. in Response to Notice of Preliminary Determination to Unseal the Material Filed in Response to Chairman’s Information Request No. 1, Question 1, January 24, 2018 (UPS Response); Response of the Association for Postal Commerce to Order No. 4377, January 24, 2018 (PostCom Response); Comments of National Association of Manufacturers on Order No. 4377, January 24, 2018 (NAM Response); Comments of US Chamber of Commerce, January 25, 2018 (U.S. Chamber of Commerce Response); Comments of the International Housewares Association, January 25, 2018 (IHA Response); Comments of the Honorable Kenny Marchant on Determination to Unseal the Material Filed in Response to Chairman’s Information Request No. 1, Question 1, January 25, 2018 (Congressman Marchant Response); Comments of James Smaldone, Founder & CEO, Mighty Mug, Inc., January 25, 2018 (Mighty Mug Response). The Commission notes that several responses were received on January 25, 2018, and reminds participants to file a motion for late acceptance in the future.

Postal Service. In its response, the Postal Service urges the Commission to maintain the non-public status of the aggregated Inbound Letter Post revenue data. Postal Service Response at 2. The Postal Service states that such data, in its view, consist of “disaggregated information of a commercial nature, which under good business practice would not be publicly disclosed.” *Id.* Accordingly, the Postal Service contends that such information is exempt from mandatory disclosure. *Id.* (citing 39 U.S.C. § 410(c)(2) and 5 U.S.C. § 552(b)(3)).

The Postal Service states that unsealing the aggregated Inbound Letter Post revenue data could result in significant commercial harm to the Postal Service and negatively affect its ability to compete in the inbound shipping services market. *Id.* at 2-3. The Postal Service explains that it operates in a competitive market for inbound international shipping services, which includes certain Inbound Letter Post pieces known as small packets. *Id.* at 3. Specifically, the Postal Service states that it competes with almost 200 Extraterritorial Offices of Exchanges (ETOE⁷) worldwide, approximately 40 of which are in the U.S., and private-sector international mailing operators. *Id.*

The Postal Service states that disclosing the aggregated Inbound Letter Post revenue data could be used by competitors to direct their sales efforts worldwide. *Id.* The Postal Service also states that such data could be used to analyze the Postal Service’s market strengths and weaknesses and competitors could focus sales and marketing efforts on those areas. *Id.* at 3-4. Furthermore, the Postal Service warns that disclosure would expose Inbound Letter Post information of other postal operators. *Id.* at 4.

⁷ ETOEs are offices or facilities administered by or in connection with a designated postal operator outside its national territory on the territory of another country for commercial purposes. United States Postal Service Publication 32, Glossary of Postal Terms, July 2013; available at: https://about.usps.com/publications/pub32/pub32_terms.htm.

In addition, the Postal Service notes that there is no publicly available information on Inbound Letter Post volumes by shape. *Id.* at 3. The Postal Service also states that the Preliminary Determination to Unseal was not prompted by any movant and that participants may still request access to this information pursuant to Commission regulations. *Id.* at 5.

UPS. In its response, UPS supports the unsealing of the aggregated Inbound Letter Post revenue data. UPS Response at 3. UPS notes that “aggregating data is a commonly accepted way to avoid disclosure of truly commercially sensitive information.” *Id.* In addition, UPS also encourages the Commission to unseal volume, cost, and weight data of inbound international parcels, also by country group and shape, to ensure that terminal dues practices can be properly evaluated for consistency with applicable statutes and regulations. *Id.*

UPS also states that it is in the public interest to unseal the aggregated Inbound Letter Post revenue data. See *id.* at 2-3. For example, UPS suggests that unsealing the data will help shed light on potential subsidization of foreign shippers and help address this potential subsidization. *Id.* at 2. Furthermore, UPS states that the aggregated Inbound Letter Post revenue data may shed light on whether Inbound Letter Post mailers are paying less than the cost of delivery. *Id.* at 3. UPS explains that this evidence may aggravate or mitigate UPS concerns that non-U.S.-based competitive product mailers may be benefiting from similar subsidies. *Id.* In addition, UPS asserts that there should be greater transparency in the terminal dues system because the public interest in financial transparency in Inbound Letter Post is the same as for domestic market dominant products. *Id.* at 2.

PostCom. In its response, PostCom asks the Commission to affirm its preliminary determination and unseal the material filed by the Postal Service in Response to CHIR No. 1, question 1. PostCom Response at 1. PostCom states that any evaluation of the non-public status of the aggregated Inbound Letter Post revenue data should begin with the fact that the material relates to a market dominant product, which by definition does not face competition. *Id.* PostCom notes that even if

disaggregated Inbound Letter Post data requires protection, similar concerns should not apply to data aggregated by country group. *Id.* PostCom states that absent a compelling showing of competitive harm, aggregated market dominant product data should be made public. *Id.* at 2.

NAM. In its response, NAM supports unsealing the aggregated Inbound Letter Post revenue data. See NAM Response at 2. NAM notes that data aggregation is a commonly-accepted method of obscuring truly commercially sensitive data. *Id.* NAM notes that disclosing the aggregated Inbound Letter Post revenue data is a reasonable first step in providing the public meaningful information relevant to the terminal dues system. *Id.* In addition, NAM also encourages the Commission to pursue further disclosure of information that the public may use to assess the problems caused by the terminal dues system, including the volume of Inbound Letter Post by country group and shape. *Id.*

U.S. Chamber of Commerce. In its response, the U.S. Chamber of Commerce supports unsealing the aggregated Inbound Letter Post revenue data. U.S. Chamber of Commerce Response at 1. The U.S. Chamber of Commerce states that any commercial sensitivity surrounding the Inbound Letter Post revenue data has been sufficiently mitigated because the data is aggregated by country group. *Id.* In addition, the U.S. Chamber of Commerce also asserts that the volume, cost, and weight data by country group should also be unsealed. *Id.* at 1-2. The U.S. Chamber of Commerce states that similar data are provided for other market dominant products. *Id.* at 2.

IHA. In its response, IHA supports unsealing the aggregated Inbound Letter Post revenue data. See IHA Response at 2. IHA states that unsealing such data would bring greater transparency to the terminal dues system. *Id.* IHA encourages the disclosure of Inbound Letter Post volume data as well. *Id.*

Mighty Mug. In its response, Mighty Mug supports unsealing the aggregated Inbound Letter Post revenue data. See Mighty Mug Response at 2. Mighty Mug agrees that the aggregation of such data “should end claims that business-sensitive proprietary information of foreign postal services is at risk.” *Id.* at 1. Moreover, Mighty

Mug encourages the Commission to disclose as much about the terminal dues systems as possible—specifically, volume from each country. *Id.* at 1-2.

Congressman Marchant. In his response, Congressman Marchant supports unsealing of the aggregated Inbound Letter Post revenue data. See Congressman Marchant Response at 2. Congressman Marchant contends that there is no rationale for sealing the information from the public. *Id.* He notes that the Postal Service’s justification for protecting disaggregated Inbound Letter Post revenue data should not apply to the aggregated revenue data. *Id.* Furthermore, Congressman Marchant states that there is no rationale for the Postal Service “to remain secretive of programs that harm U.S. businesses and jobs.” *Id.* Because Inbound Letter Post is a market dominant product, Congressman Marchant asserts that the 2006 Postal Accountability and Enhancement Act requires full disclosure and that the Postal Service should be fully transparent. *Id.*

Congressman Marchant encourages the Commission to unseal Inbound Letter Post volumes, aggregated by country group and shape. *Id.* Furthermore, the Congressman also encourages the Commission to direct the Postal Service to disclose the inbound international letters volume as distinguished from inbound international parcels. See *id.*

IV. COMMISSION ANALYSIS

Aggregated revenue data. The standard for issuing a decision on the termination of non-public status of material filed under seal is provided under 39 C.F.R. § 3007.33(a).

In determining whether to publicly disclose non-public materials filed by the Postal Service, the Commission shall balance the nature and extent of the likely commercial injury identified by the Postal Service against the public interest in maintaining the financial transparency of a government entity competing in commercial markets.

In this instance, the public interest in maintaining the financial transparency of a government entity outweighs any likely commercial injury that has been identified by the

Postal Service. As UPS, PostCom, the U.S. Chamber of Commerce, and Congressman Marchant note, Inbound Letter Post is a market dominant product. UPS Response at 2; PostCom Response at 1; U.S. Chamber of Commerce Response at 2, Congressman Marchant Response at 2. Generally, the Postal Service publicly files disaggregated market dominant revenue data to assist the public in drafting comments related to a product's compliance with applicable statutory and regulatory requirements.⁸

However, in the case of Inbound Letter Post, the Commission has acknowledged that disclosure of revenue data, disaggregated by designated postal operator, may result in commercial harm to foreign postal operators that have a proprietary interest in the country-specific data. See Order No. 4215 at 34. Accordingly, in the past, the Commission has granted non-public status to such data. *Id.*

The Postal Service states that aggregated Inbound Letter Post revenue data may be considered proprietary by third parties because it could give indications of non-public volume information of specific designated postal operators. Notice of Filing USPS–FY17–NP31 at 2. In its unredacted response, the Postal Service states that disclosure would expose Inbound Letter Post information of other postal operators because the Postal Service earns more Inbound Letter Post revenue from certain designated postal operators than others. Postal Service Response at 4. The Postal Service suggests that even casual observers of the industry would be able to analyze the aggregated revenue data and determine the Postal Service's market strengths and weaknesses. *Id.* at 3-4.

The Commission finds that the potential commercial harm does not outweigh the public interest in financial transparency. First, because the data is aggregated, the potential commercial harm to foreign postal operators has been alleviated. The UPU

⁸ See Library Reference USPS–FY17–1, December 29, 2017. The Public Cost and Revenue Report displays revenues, attributable costs, volume variable costs, unit contribution, cost coverages, volumes, and weights for each of the Postal Service's market dominant products.

has 192 members.⁹ There are four country groups and there are at least 30 countries or territories in each country group.¹⁰ Thus, aggregation masks operator-specific revenue data.

The Commission acknowledges that the Postal Service earns more Inbound Letter Post revenue from certain designated operators than others. However, because the information is aggregated, determining operator-specific data still requires varying degrees of speculation. It is unlikely that unsealing aggregated revenue data will result in the disclosure of third-party proprietary data. The low probability of commercial harm is further demonstrated by the lack of any third-party response to the Commission's Preliminary Determination to Unseal.

Second, the Commission considers the potential for competitors to analyze the aggregated data and alter their methods to be minimal. It is likely that competitors have already identified certain markets as desirable and have devoted sales and marketing resources to those areas to increase their share of those markets. It is unlikely that disclosure of the aggregated data will cause any competitor to redirect their resources. The potential for commercial harm is further mitigated by the fact that the aggregated revenue data are from FY 2016.

For these reasons, the Commission affirms its preliminary determination to unseal the aggregated Inbound Letter Post revenue data filed in Response to CHIR No. 1, question 1. The Postal Service shall re-file its Response to CHIR No. 1, question 1 and related materials in a public library reference no later than January 29, 2018.

Additional Inbound Letter Post data. In their responses, Congressman Marchant, UPS, NAM, the U.S. Chamber of Commerce, IHA, and Mighty Mug all suggest that the Commission should disclose additional data related to Inbound Letter Post. Specifically, Congressman Marchant encourages "the Commission to unseal not

⁹ The UPU website, available at: <http://www.upu.int/en/the-upu/the-upu.html>.

¹⁰ Decisions of the 2016 Istanbul Congress, UPU (2017) at 251-257; available at: http://www.upu.int/uploads/tx_sbdownloader/actsLastCongressActsEn.pdf. Group I consists of 41

only the aggregated revenues to the Postal Service, but also aggregated volumes, by class and shape[.]” Congressman Marchant Response at 2. In addition, UPS encourages “the Commission to order the further disclosure of data involving volumes, costs, and weight data of inbound international parcels (by country group and shape)[.]” UPS Response at 3. Similarly, the U.S. Chamber of Commerce states that “the *volume, cost, and weight* data by UPU country group and shape should also be unsealed[.]” U.S. Chamber of Commerce Response at 1-2 (emphasis in original). However, because the Postal Service has not filed such aggregated volume, cost, or weight data in this docket, the Commission cannot determine whether such data should be afforded non-public or public status, and therefore does not order disclosure of such data at this time.

V. ORDERING PARAGRAPHS

It is ordered:

1. The material filed in Response to Chairman’s Information Request No.1, question 1 should be unsealed.
2. The Postal Service shall re-file its Response to CHIR No. 1, question 1 and related materials in a public library reference no later than January 29, 2018.

By the Commission.

Ruth Ann Abrams
Acting Secretary

countries and territories; Group II consists of 34 countries and territories; Group III consists of 39 countries and territories; and Group IV consists of 105 countries and territories. *Id.*